IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OSA No. 30 of 2000.

Date of decision: 2.8. 2007

Lal Singh Chandel .... Appellant

Versus

M/S Northern Digital Exchanges Ltd. & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. C.B. Singh & Mr. Vinod Gupta, Advocates.

For the respondents: Mr. K.D. Sood & Mr. B.K. Sood, Advocates, for respondent No. 3.

Per V.K. Ahuja, J.:

This is an appeal filed by the appellant against the judgment of the learned Single Judge dated 4.4.2000, vide which the suit filed by the appellant for recovery of damages amounting to Rs.6,20,000/- as against the respondents (here-in-after referred to as the defendants) was dismissed.

Briefly stated the facts of the case are that the plaintiff was working as a Senior Deputy Tourism Development Officer, with the Himachal Pradesh Tourism Development Corporation and was posted as Manager, Log Huts, at Manali. The Corporation intended to install EPABX system at its various Hotels in the State including the Log Huts at Manali. A purchase order was placed with the defendants on

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

15.1.1993. The consignment of relevant equipments for the installation was delivered by the defendants through their agent at Log Huts, Manali in March/April, 1993, when the plaintiff was the Manager. The system was installed by Anurag Sharma, Engineer of the defendant on 10/11.5.1994 when it was found that two equipments, namely, computer and V.S.C. printer were not available. The said Anurag Sharma left the place assuring the plaintiff that he would come back with the requisite equipments within a week. It is also the case of the plaintiff that at the time of delivery of the consignment by the Agent of the defendants, the plaintiff on 8.5.1993 had given a receipt acknowledging the receipt of the equipments for the installation of EPABX system. It was alleged that the representative of the defendant did not turn up inspite of telephone calls given by the plaintiff and letters written by him to his head office. It was alleged that the receipt issued by the plaintiff to the defendants on 8.5.1993 included PC-XT with V.S.C. printer one set which was presented the same to the head office of Corporation at Shimla. It was alleged that the defendants had not installed and supplied the computer and printer earlier. The Corporation sought the explanation of the plaintiff who replied that the receipt is forged one and his explanation was not believed and orders were issued to effect recovery from the plaintiff. It was alleged that since the defendants were sure that their forgery will not work and they asked the plaintiff to take the supply and the plaintiff went to Mohali and the Engineer of the defendants came and installed the equipments by 8.12.1994.

It was alleged that the defendants played a fraud for which the plaintiff suffered a great harassment, defamation and his reputation was lowered and he accordingly claimed damages for

Rupees Two Lacs for defamation, Rupees Two Lacs for harassment and Rupees Two Lacs for harassment of his family members and Rs.20,000/- for suffering ill health and medical treatment. In all, the plaintiff claimed damages to the extent of Rs.6,20,000/-.

Defendants pleaded that the entire equipments were supplied in boxes which were opened by their representative in presence of the plaintiff who after due checking gave receipt and the equipments so supplied included computer and printer. It was pleaded that no part of the receipt was forged. The entire receipt was in the hand of the plaintiff and they denied having intentionally defamed the plaintiff or that members of his family suffered in any manner.

On the pleadings of the parties, the following issues were framed on 8.8.1996:

1. Whether the defendant never supplied PC-XT TVSE Printer as alleged and the defendant forged the receipt given by the plaintiff to the defendant? …OPP

2. Whether the defendant did not supply a similar Printer as referred to in issue No.1 to Hotel Rohtang Manalsu, as alleged? …OPP

3. What is the effect of receipt given to the plaintiff on 8.12.94 by the defendant in which the non-supply of PC-XT TVSE Printer earlier was admitted by the defendant? …OPP

4. Whether the plaintiff has suffered loss of reputation, mental and physical harassment and whether his family has also suffered on that account as alleged, if so, to what extent? …OPP

5. If issue No. 4 is proved, whether the plaintiff is entitled to damages, as alleged, and to what extent? …OPP

6. Whether the suit is not maintainable? …OPD

7. Whether the suit is misconceived, without any foundation and exaggerated false claim has been made to create jurisdiction of this Court, if so, its effect? …OPD

8. Relief.

Parties led their evidence and the learned Single Judge vide its judgment decided issues No. 1 to 7 as against the plaintiff and in favour of the defendants and consequently the suit was dismissed with costs.

We have heard the learned counsel for the parties and have gone through the record.

The first and foremost question which arises for consideration is as to whether the receipt in question was forged one and that the supply of the computer and printer had not been made at the first instance but the receipt was forged by the defendants. Then the second question arises as to whether the plaintiff has suffered any damage, if so to what extent. The fact that some equipments for the installation of EPABX system were supplied by the defendants on 8.5.1993 to the plaintiff who was Manager of the Corporation at Log Huts, Manali who had received such equipments and had given a receipt on that day stands established and has not been disputed. The only plea taken by the plaintiff was that part of the receipt regarding computer and printer was forged one and had not been issued by him on 8.5.1993.

Plaintiff as PW-1 has admitted having received the consignment from the defendants and that the goods were handed over to him by the representative of the defendants and these were opened

by him on that date was admitted by him in statement as PW-1. He stated that the printer as well as the electrical installation were still to be received and the representative told him that he will return with the necessary equipments and man power after a week. He stated that he handed over the original receipt to the representative of the defendants and retained the copy Ext. PW1/A. None came from the side of defendants inspite of calls having been made by him as well as writing letters but the process of wiring was completed on 10.5.1994 by one Shri Anurag Sharma, Engineer of the defendants who visited the log huts. He told Shri Anurag Sharma that computer and printer were not received who promised to return within a week and a forged copy of the receipt was produced and Department called for his explanation vide show cause noticext.PW1/B. He went to the office of defendants at Chandigarh and they supplied the missing components. The photo copy of the receipt Ext.D3 proved in evidence allegedly issued by the plaintiff to the representative of the defendants shows that EPABX system alongwith printer set was received and the plaintiff had pleaded that these were forged by the defendants, but no steps were taken by the plaintiff to call for the original receipt Ext.D3 which as per the plaintiff's own case was in possession of the Corporation. Thus the onus lay heavily upon the plaintiff to prove that the receipt which was available with the head office was forged one and the words about the receipt of the printer and computer were added subsequently by the defendants or were not in his handwriting. The plaintiff is relying upon the statement of the employee of the defendant PW-9 Anurag Sharma who was working as Manager at the relevant time and had installed the system at Manali. PW-9 Anurag Sharma has stated that he had gone alongwith another officer of defendant No. 1 to Patiala to obtain an

opinion of the handwriting expert with regard to the copy of the receipt available with him and the handwriting expert has given his opinion that the last line in the receipt had been written subsequently. The learned Single Judge has rightly disbelieved this statement of PW-9 Anurag Sharma since he was not an expert in hand writing. The opinion given by him was also not proved and the said expert had also not been examined by the plaintiff. According to PW-9 Anurag Sharma, comparision of the handwriting was made on the basis of a copy and there is nothing which could be inferred from statement of PW-9 to hold that the document was forged one since he was not an expert who has not been examined and his report has not been proved. There is nothing on record to show that the plaintiff made complaint to his head office about the non supply of the computer and printer by the defendants which could have given credence to his case. There was no occasion for PW-9 Anurag Sharma to go at Patiala to seek the opinion about the receipt and spent his own money for taking opinion of the expert or for going to Patiala and it was nowhere his case that he was asked by his employer to go to Patiala and seek opinion in this regard. Therefore, PW-9 Anurag Sharma appears to be a procured witness who had just come to help the plaintiff and his statement was rightly disbelieved by the learned Single Judge by holding that his statement does not substantiate the case of the plaintiff.

The main document to be proved was the receipt and as to whether it was in the handwriting of the plaintiff or not in which the plaintiff had miserably failed and the learned Single Judge had rightly come to the conclusion that the plaintiff had failed to prove his case that the defendants did not supply the printer and computer and obtained a receipt which was forged subsequently. Those findings of

the learned Single Judge are based upon the correct appreciation of evidence and are not liable to be interfered with and are accordingly affirmed. The appeal filed by the appellant is dismissed. Parties are left to bear their own costs. Decree sheet be prepared accordingly.

(Deepak Gupta),
Judge

(V.K. Ahuja),
Judge

August 02 , 2007
(BSS)